IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Crl.MC.No. 1707 of 2007()

(AGAINST THE ORDER IN CRL.M.P.NO.872/07 DATED 7/3/07 OF Judicial First Class Magistrate Court ,THIRUVALLA.

PETITIONER:

CHERIAN PHILIP,
S/O.T.T.PHILIP, THEKKANAL VEETTIL,
KOTTANGAL VILLAGE, MALLAPPALLY TALUK,
PATHANAMTHITTA.

BY ADV. SRI.R.SANTHOSH BABU

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. BALASUBRAMANIAN PILLAI,
S/O RAMAKRISHNA PILLAI, VAYALATHALA VEEDU,
EZHUMATTOOR MURI, DO VILLAGE, MALLAPPALLY TALUK,
PATHANAMTHITTA DIST.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Cr.M.C.No. 1707 of 2007

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Dated this the 12th day of July, 2007

ORDER

The petitioner is aggrieved by Annexure H order passed by the learned Magistrate directing the release of a vehicle seized in a crime to the 2nd respondent herein. The said crime was registered at the instance of the petitioner.

2. There is a long story behind the registration of the crime. The petitioner claims that he purchased a stage carriage(bus) from the 2nd respondent on 20.9.06. He was allegedly operating the said stage carriage on the route. On 13.2.07 some miscreants allegedly took away the vehicle by force. The petitioner allegedly filed a complaint before the Police. The vehicle was seized by the Police. The police did not take any effective action. In these circumstances, the petitioner was obliged to come before this Court and file a writ petition. By Annexure E judgment passed by this Court, the Police was directed to take necessary action in accordance with the Code of Criminal Procedure. Accordingly a crime was registered . The petitioner filed Annexure F application for release of the vehicle in his favour. It is the case of the petitioner that the vehicle was remaining in his custody as per order passed by the learned Chief Judicial Magistrate under Annexure K order. By the time, Annexure F petition came up for hearing, the Police reported before the learned Magistrate that the

crime has been referred. According to the petitioner he has not received any notice of such reference. He intends to challenge such reference, if any, by initiating appropriate proceedings before the learned Magistrate. Be that as it may, after Annexure F petition was dismissed, the 2nd respondent herein filed Annexure G petition on the basis of which Annexure H order was passed directing release of the vehicle to the 2nd respondent. The 2nd respondent is thus in possession of the vehicle now.

3. The petitioner has come to this Court raising the grievance that Annexure F and Annexure G petitions have not been disposed of in accordance with law. Annexure F petition has been dismissed on the sole ground that the case has been referred. Annexure G petition has been disposed of by Annexure H order without even giving notice to the petitioner and hearing him. The fact that the vehicle was in the posession of the petitioner under Annexure K order was not even considered by the learned Magistrate when he passed Annexure H order. In these circumstances, the petitioner prays that Annexure H order may be set aside and a direction may be issued to release the vehicle to the petitioner.

4. Having heard the learned counsel for the petitioner and the 2nd respondent as also the learned Public Prosecutor, I am satisfied that the disposal of the applications for release of the vehicle has not been done properly and in accordance with law. I am satisfied that the

impugned orders passed must be set aside and there must be a direction to the Magistrate to dispose of Annexure F and Annexure G petitions afresh, after hearing all concerned ie. the petitioner, the 2nd respondent and the learned Public Prosecutor and after giving them adequate opportunity to produce materials to substantiate their cases. There can be a direction to dispose of the case within a specified time frame also.

5. In the result this Crl.M.C. is allowed. Annexure H order is set aside. The learned Magistrate is directed to dispose of Annexure F and Annexure G petitions filed by the petitioner and the 2nd respondent for release of the vehicle to them after giving all concerned an opportunity to be heard as also an opportunity to place all the relevant materials before the learned Magistrate. Parties shall appear before the learned Magistrate on 19.7.07. The learned Magistrate shall dispose of both the petitions together as expeditiously as possible at any rate by 4.8.07.

6. Hand over a copy of this order to the both counsel. Communicate copy to the court below also forthwith.

(R.BASANT, JUDGE)

sj